

AMENDED IN SENATE MAY 4, 2005
AMENDED IN SENATE APRIL 20, 2005

SENATE BILL

No. 302

Introduced by Senator Scott

February 16, 2005

An act to amend Sections 7630, 8604, and 9003 of the Family Code, and to amend ~~Sections 294 and 305.6~~ *Section 294* of the Welfare and Institutions Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 302, as amended, Scott. Adoption.

Existing law provides that a man is presumed to be the natural father of a child if certain conditions are met. This presumption may be rebutted by a judgment establishing paternity of the child by another man. Existing law also authorizes a child, the child's natural mother, or, with certain exceptions, a presumed father of the child to bring an action to determine paternity, as specified.

Existing law provides that if a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who has a presumed father, the father must be given notice of the adoption proceeding and a child may not be adopted without his consent, except under specified circumstances.

~~Existing law establishes procedures for a peace officer to take a minor who is in a hospital into temporary custody if the release of the minor to a prospective adoptive parent poses an immediate danger to the minor's health or safety.~~

Existing law also provides that, in a stepparent adoption, the consent of either or both birth parents must be signed in the presence of a county clerk, probation officer, qualified court investigator, or county welfare department staff member of any county of this state.

Existing law requires the social worker or probation officer to give notice to specified persons of a hearing to terminate parental rights or establish the legal guardianship of a dependent child.

This bill would authorize, in a stepparent adoption, the consent of either or both birth parents to be signed in the presence of a notary public.

The bill would additionally authorize an adoption agency to whom the child has been relinquished to or a prospective adoptive parent *of the child* to bring an action to determine paternity.

The bill would provide that the consent of a presumed father is not required for the child's adoption unless he became a presumed father before the mother's relinquishment or consent becomes irrevocable or before the mother's parental rights have been terminated.

The bill would also expand the list of specified persons whom the social worker or probation officer must notify regarding a hearing to terminate parental rights or establish a legal guardianship by requiring that notice be given to unknown parents by publication, if ordered by the court, as specified. By expanding the duties of social workers and probation officers, the bill would impose a state-mandated local program.

~~The bill would extensively revise the procedures required for a peace officer to take a minor who is in a hospital into temporary custody if the release of the minor to a prospective adoptive parent poses immediate danger to the minor's health or safety.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7630 of the Family Code is amended to
2 read:

1 7630. (a) A child, the child's natural mother, a man
2 presumed to be the child's father under subdivision (a), (b), or (c)
3 of Section 7611, an adoption agency to whom the child has been
4 relinquished to or a prospective adoptive parent *of the child*, may
5 bring an action as follows:

6 (1) At any time for the purpose of declaring the existence of
7 the father and child relationship presumed under subdivision (a),
8 (b), or (c) of Section 7611.

9 (2) For the purpose of declaring the nonexistence of the father
10 and child relationship presumed under subdivision (a), (b), or (c)
11 of Section 7611 only if the action is brought within a reasonable
12 time after obtaining knowledge of relevant facts. After the
13 presumption has been rebutted, paternity of the child by another
14 man may be determined in the same action, if he has been made
15 a party.

16 (b) Any interested party may bring an action at any time for
17 the purpose of determining the existence or nonexistence of the
18 father and child relationship presumed under subdivision (d) or
19 (f) of Section 7611.

20 (c) An action to determine the existence of the father and child
21 relationship with respect to a child who has no presumed father
22 under Section 7611 or whose presumed father is deceased may
23 be brought by the child or personal representative of the child,
24 the Department of Child Support Services, the mother or the
25 personal representative or a parent of the mother if the mother
26 has died or is a minor, a man alleged or alleging himself to be the
27 father, or the personal representative or a parent of the alleged
28 father if the alleged father has died or is a minor.

29 (d) An action under subdivision (c) shall be consolidated with
30 a proceeding pursuant to Section 7662 whenever a proceeding
31 has been filed under Chapter 5 (commencing with Section 7660).
32 The parental rights of the alleged natural father shall be
33 determined as set forth in Section 7664. The consolidated action
34 shall be heard in the court in which the Section 7662 proceeding
35 is filed, unless the court in which the action under subdivision (c)
36 is filed finds, by clear and convincing evidence, that transferring
37 the action to the other court poses a substantial hardship to the
38 petitioner. Mere inconvenience does not constitute a sufficient
39 basis for a finding of substantial hardship. If the court determines

1 there is a substantial hardship, the consolidated action shall be
2 heard in the court in which the paternity action is filed.

3 SEC. 2. Section 8604 of the Family Code is amended to read:

4 8604. (a) Except as provided in subdivision (b), a child
5 having a presumed father under Section 7611 may not be adopted
6 without the consent of the child's birth parents, if living. The
7 consent of a presumed father is not required for the child's
8 adoption unless he became a presumed father as described in
9 Section 7611 before the mother's relinquishment or consent
10 becomes irrevocable or before the mother's parental rights have
11 been terminated.

12 (b) If one birth parent has been awarded custody by judicial
13 order, or has custody by agreement of both parents, and the other
14 birth parent for a period of one year willfully fails to
15 communicate with and to pay for the care, support, and education
16 of the child when able to do so, then the birth parent having sole
17 custody may consent to the adoption, but only after the birth
18 parent not having custody has been served with a copy of a
19 citation in the manner provided by law for the service of a
20 summons in a civil action that requires the birth parent not
21 having custody to appear at the time and place set for the
22 appearance in court under Section 8718, 8823, 8913, or 9007.

23 (c) Failure of a birth parent to pay for the care, support, and
24 education of the child for the period of one year or failure of a
25 birth parent to communicate with the child for the period of one
26 year is prima facie evidence that the failure was willful and
27 without lawful excuse.

28 SEC. 3. Section 9003 of the Family Code is amended to read:

29 9003. (a) In a stepparent adoption, the consent of either or
30 both birth parents shall be signed in the presence of a notary
31 public, county clerk, probation officer, qualified court
32 investigator, or county welfare department staff member of any
33 county of this state. The notary public, county clerk, probation
34 officer, qualified court investigator, or county welfare department
35 staff member before whom the consent is signed shall
36 immediately file the consent with the clerk of the court where the
37 adoption petition is filed. The clerk shall immediately notify the
38 probation officer or, at the option of the board of supervisors, the
39 county welfare department of that county.

1 (b) If the birth parent of a child to be adopted is outside this
2 state at the time of signing the consent, the consent may be
3 signed before a notary or other person authorized to perform
4 notarial acts.

5 (c) The consent, when reciting that the person giving it is
6 entitled to sole custody of the child and when acknowledged
7 before the notary public, county clerk, probation officer,
8 qualified court investigator, or county welfare department staff
9 member, is prima facie evidence of the right of the person
10 signing the consent to the sole custody of the child and that
11 person's sole right to consent.

12 (d) A birth parent who is a minor has the right to sign a
13 consent for the adoption of the birth parent's child and the
14 consent is not subject to revocation by reason of the minority.

15 SEC. 4. Section 294 of the Welfare and Institutions Code is
16 amended to read:

17 294. The social worker or probation officer shall give notice
18 of a selection and implementation hearing held pursuant to
19 Section 366.26 in the following manner:

20 (a) Notice of the hearing shall be given to the following
21 persons:

22 (1) The mother.

23 (2) The fathers, presumed and alleged.

24 (3) The child, if the child is 10 years of age or older.

25 (4) Any known sibling of the child who is the subject of the
26 hearing if that sibling either is the subject of a dependency
27 proceeding or has been adjudged to be a dependent child of the
28 juvenile court. If the sibling is 10 years of age or older, the
29 sibling, the sibling's caregiver, and the sibling's attorney. If the
30 sibling is under 10 years of age, the sibling's caregiver and the
31 sibling's attorney. However, notice is not required to be given to
32 any sibling whose matter is calendared in the same court on the
33 same day.

34 (5) The grandparents of the child, if their address is known and
35 if the parent's whereabouts are unknown.

36 (6) All counsel of record.

37 (7) If the court knows or has reason to know that an Indian
38 child is involved, then to the Indian custodian and the tribe of
39 that child. If the identity or location of the parent or Indian

1 custodian and the tribe cannot be determined, notice shall be
2 given to the Bureau of Indian Affairs.

3 (8) To any unknown parent by publication, if ordered by the
4 court, in addition to and concurrently with any other notice
5 required under this section, in any case in which an alleged
6 parent has been determined by the petitioner to not be a parent
7 and the identity of one or both of the parents, or alleged parents,
8 is unknown. In any case where an alleged parent is known by the
9 petitioner to not be a parent and the identity of one or both of the
10 parents or alleged parents is unknown, the petitioner shall seek an
11 order for publication notice pursuant to this paragraph as soon as
12 possible, and in no case later than 30 days after the petitioner
13 discovers the parent is unknown. An order of publication
14 pursuant to this paragraph shall be based on an affidavit from the
15 petitioner describing efforts made to identify the unknown parent
16 or parents and a finding by the court that there has been due
17 diligence in attempting to identify the unknown parent.

18 (b) The following persons shall not be notified of the hearing:

19 (1) A parent who has relinquished the child to the State
20 Department of Social Services or to a licensed adoption agency
21 for adoption, and the relinquishment has been accepted and filed
22 with notice as required under Section 8700 of the Family Code.

23 (2) An alleged father who has denied paternity and has
24 executed a waiver of the right to notice of further proceedings.

25 (3) A parent whose parental rights have been terminated.

26 (c) (1) Service of the notice shall be completed at least 45
27 days before the hearing date. Service is deemed complete at the
28 time the notice is personally delivered to the person named in the
29 notice or 10 days after the notice has been placed in the mail, or
30 at the expiration of the time prescribed by the order for
31 publication.

32 (2) In the case of an Indian child, notice to the Indian
33 custodian and the tribe shall be completed at least 10 days before
34 the hearing.

35 (3) In the case of an Indian child, if notice is given to the
36 Bureau of Indian Affairs, the bureau shall have 15 days after
37 receipt to provide the requisite notice to the parent or Indian
38 custodian and the tribe.

39 (4) Service of notice in cases where publication is ordered
40 shall be completed at least 30 days before the date of the hearing.

(d) Regardless of the type of notice required, or the manner in which it is served, once the court has made the initial finding that notice has properly been given to the parent, or to any person entitled to receive notice pursuant to this section, subsequent notice for any continuation of a Section 366.26 hearing may be by first-class mail to any last known address, by an order made pursuant to Section 296, or by any other means that the court determines is reasonably calculated, under any circumstance, to provide notice of the continued hearing. However, if the recommendation changes from the recommendation contained in the notice previously found to be proper, notice shall be provided to the parent, and to any person entitled to receive notice pursuant to this section, regarding that subsequent hearing.

(e) The notice shall contain the following information:

- (1) The date, time, and place of the hearing.
- (2) The right to appear.
- (3) The parents' right to counsel.
- (4) The nature of the proceedings.
- (5) The recommendation of the supervising agency.
- (6) A statement that, at the time of hearing, the court is required to select a permanent plan of adoption, legal guardianship, or long-term foster care for the child.

(7) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(f) Notice to the parents may be given in any one of the following manners:

- (1) If the parent is present at the hearing at which the court schedules a hearing pursuant to Section 366.26, the court shall advise the parent of the date, time, and place of the proceedings, their right to counsel, the nature of the proceedings, and the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the child. The court shall direct the parent to appear for the proceedings and then direct that the parent be notified thereafter by first-class mail to the parent's usual place of residence or business only.

(2) Certified mail, return receipt requested, to the parent's last known mailing address. This notice shall be sufficient if the child welfare agency receives a return receipt signed by the parent.

(3) Personal service to the parent named in the notice.

(4) Delivery to a competent person who is at least 18 years of age at the parent's usual place of residence or business, and thereafter mailed to the parent named in the notice by first-class mail at the place where the notice was delivered.

(5) If the residence of the parent is outside the state, service may be made as described in paragraph (1), (3), or (4) or by certified mail, return receipt requested.

(6) If the recommendation of the probation officer or social worker is legal guardianship or long-term foster care, service may be made by first-class mail to the parent's usual place of residence or business.

(7) If a parent's identity is known but his or her whereabouts are unknown and the parent cannot, with reasonable diligence, be served in any manner specified in paragraphs (1) to (6), inclusive, the petitioner shall file an affidavit with the court at least 75 days before the hearing date, stating the name of the parent and describing the efforts made to locate and serve the parent.

(A) If the court determines that there has been due diligence in attempting to locate and serve the parent and the probation officer or social worker recommends adoption, service shall be to that parent's attorney of record, if any, by certified mail, return receipt requested. If the parent does not have an attorney of record, the court shall order that service be made by publication of citation requiring the parent to appear at the date, time, and place stated in the citation, and that the citation be published in a newspaper designated as most likely to give notice to the parent. Publication shall be made once a week for four consecutive weeks. Whether notice is to the attorney of record or by publication, the court shall also order that notice be given to the grandparents of the child by first-class mail.

(B) If the court determines that there has been due diligence in attempting to locate and serve the parent and the probation officer or social worker recommends legal guardianship or long-term foster care, no further notice is required to the parent,

1 but the court shall order that notice be given to the grandparents
2 of the child by first-class mail.

3 (C) In any case where the residence of the parent becomes
4 known, notice shall immediately be served upon the parent as
5 provided for in either paragraph (2), (3), (4), (5), or (6).

6 (8) If the identity of one or both of the parents, or alleged
7 parents, of the child is unknown, or if the name of one or both
8 parents is uncertain, then that fact shall be set forth in the
9 affidavit and the court, if ordering publication, shall order the
10 published citation to be directed to either the father or mother, or
11 both, of the child, and to all persons claiming to be the father or
12 mother of the child, naming and otherwise describing the child.
13 An order of publication pursuant to this paragraph shall be based
14 on an affidavit describing efforts made to identify the unknown
15 parent or parents. If the court determines there has been due
16 diligence in attempting to identify the unknown parent, the court
17 may order notice by publication pursuant to this section no less
18 than 60 or more than 75 days prior to the hearing. Service made
19 by publication pursuant to this paragraph shall require the
20 unknown parent or parents to appear at the date, time, and place
21 stated in the citation. Publication shall be made once a week for
22 four consecutive weeks. Consistent with the provisions of
23 Sections 7665 and 7666 of the Family Code, the court may issue
24 an order dispensing with notice to a natural parent or possible
25 natural parent if, after inquiry and a determination that there has
26 been due diligence in attempting to identify the unknown parent,
27 the court is unable to identify the natural parent and no person
28 has appeared claiming to be the natural parent.

29 (g) Notice to the child and all counsel of record shall be by
30 first-class mail.

31 (h) In the case of an Indian child, notice to the tribe shall be by
32 registered mail, return receipt requested.

33 (i) Notwithstanding subdivision (a), if the attorney of record is
34 present at the time the court schedules a hearing pursuant to
35 Section 366.26, no further notice is required, except as required
36 by subparagraph (A) of paragraph (7) of subdivision (f).

37 (j) This section shall also apply to children adjudged wards
38 pursuant to Section 727.31.

39 (k) The court shall state the reasons on the record explaining
40 why good cause exists for granting any continuance of a hearing

1 held pursuant to Section 366.26 to fulfill the requirements of this
2 section.

3 ~~SEC. 5. Section 305.6 of the Welfare and Institutions Code is~~
4 ~~amended to read:~~

5 ~~305.6. (a) Any peace officer may, without a warrant, take~~
6 ~~into temporary custody a minor who is in a hospital if the release~~
7 ~~of the minor to a prospective adoptive parent poses an immediate~~
8 ~~danger to the minor's health or safety.~~

9 ~~(b) (1) Notwithstanding subdivision (a) and Section 305, a~~
10 ~~peace officer may not, without a warrant, take into temporary~~
11 ~~custody a minor who is in a hospital if all of the following~~
12 ~~conditions exist:~~

13 ~~(A) The minor is a newborn who tested positive for illegal~~
14 ~~drugs or whose birth mother tested positive for illegal drugs.~~

15 ~~(B) The minor is the subject of a proposed adoption and a~~
16 ~~Health Facility Minor Release Report, prescribed by the~~
17 ~~department, has been completed by the hospital, including the~~
18 ~~marking of the boxes applicable to an independent adoption or~~
19 ~~agency adoption planning, and signed by the placing birth parent~~
20 ~~or birth parents and (1) the prospective adoptive parent or~~
21 ~~parents, (2) an attorney for the prospective adoptive parent or~~
22 ~~parents, or (3) an authorized representative of a licensed adoption~~
23 ~~agency prior to the discharge of the birth parent or the minor~~
24 ~~from the hospital. Prior to signing of the Health Facility Minor~~
25 ~~Release Report, the birth parent or birth parents shall be given a~~
26 ~~notice written in at least 14-point pica type, containing~~
27 ~~substantially the following statements:~~

28 ~~(i) That the Health Facility Minor Release Report does not~~
29 ~~constitute consent to adoption of the minor by the prospective~~
30 ~~adoptive parent or parents, or any other prospective adoptive~~
31 ~~parent or parents.~~

32 ~~(ii) That the Health Facility Minor Release Report does not~~
33 ~~constitute a relinquishment of parental rights for the purposes of~~
34 ~~adoption.~~

35 ~~(iii) That the birth parent or birth parents or any person~~
36 ~~authorized by the birth parent or birth parents may reclaim the~~
37 ~~minor at any time from the prospective adoptive parent or parents~~
38 ~~or any other person to whom the minor was released by the~~
39 ~~hospital, until an adoption placement agreement or a~~
40 ~~relinquishment is signed by the birth parent or birth parents.~~

1 This notice shall be signed by the birth parent or birth parents
2 and attached to the Health Facility Minor Release Report.

3 (C) The release of the minor to a prospective adoptive parent
4 or parents, their attorney, or an authorized representative of a
5 licensed adoption agency does not pose an immediate danger to
6 the minor.

7 (D) An attorney or an adoption agency has provided
8 documentation stating that he or she, or the agency, is
9 representing the prospective adoptive parent or parents for
10 purposes of the adoption. In the case of an independent adoption,
11 as defined in Section 8524 of the Family Code, the attorney or
12 adoption agency shall provide documentation stating that the
13 prospective adoptive parent or parents have been informed that
14 the child may be eligible for benefits provided pursuant to the
15 Adoption Assistance Program, as set forth in Chapter 2.1
16 (commencing with Section 16115) of Part 4 of Division 9, only
17 if, at the time the petition is filed, the child has met the
18 requirements to receive federal supplemental security income
19 benefits pursuant to Subchapter XVI (commencing with Section
20 1381) of Chapter 7 of Title 42 of the United States Code, as
21 determined and documented by the federal Social Security
22 Administration.

23 (E) The prospective adoptive parent or parents or their
24 attorney, or an authorized representative of a licensed adoption
25 agency provides all of the following to the local child protective
26 services agency or to the peace officer who is at the hospital to
27 take the minor into temporary custody:

28 (i) A copy of the Health Facility Minor Release Report with
29 the signed notice to the birth parent or birth parents as described
30 in subparagraph (B).

31 (ii) A copy of the petition for adoption or a statement signed
32 by either the prospective adoptive parents or an authorized
33 representative of the adoption agency, that this child is the
34 subject of a proposed adoption.

35 (iii) A copy of a written statement that the prospective
36 adoptive parents or adoption agency personnel will immediately
37 notify the local child protective services agency if the adoption
38 plan is terminated for any reason.

39 (2) Notwithstanding Section 305 or subdivision (a) of this
40 section, a peace officer may not, without a warrant, take into

1 temporary custody a minor who is in a hospital if all of the
2 following conditions exist:

3 (A) The minor is a newborn who tested positive for illegal
4 drugs or whose birth mother tested positive for illegal drugs.

5 (B) The minor is the subject of a proposed for adoption and a
6 prospective adoptive parent or prospective adoptive parents have
7 been licensed to act as a foster parent or foster parents of the
8 minor pending finalization of the petition for adoption.

9 (C) The release of the minor to the prospective adoptive parent
10 or prospective adoptive parents does not pose an immediate
11 danger to the minor.

12 (D) The prospective adoptive parent or parents or their
13 representative provides to the local child protective services
14 agency or to the peace officer who is at the hospital to take the
15 minor into temporary custody a copy of the documents
16 evidencing licensure as a foster parent or foster parents as well as
17 a written statement of their intent to adopt the child, and a written
18 statement agreeing to notify the local child protective services
19 agency if the adoption plan is terminated for any reason.

20 (3) A copy of an adoption placement agreement signed by the
21 placing birth parent or birth parents and the prospective adoptive
22 parent or parents may be used in place of the Health Facility
23 Minor Release Report and notice to the birth parent or birth
24 parents as described in subparagraph (B) of paragraph (1).

25 (e) Nothing in this section is intended to create a duty that
26 requires law enforcement to investigate the prospective adoptive
27 parent or parents.

28 SEC. 6.

29 SEC. 5. If the Commission on State Mandates determines that
30 this act contains costs mandated by the state, reimbursement to
31 local agencies and school districts for those costs shall be made
32 pursuant to Part 7 (commencing with Section 17500) of Division
33 4 of Title 2 of the Government Code.